

1 **IN THE GRAND COURT OF THE CAYMAN ISLANDS**  
2 **FAMILY DIVISION**

3  
4 **Cause No: FAM 0199/2016**  
5

6 **BETWEEN:**

7 **M. C.**

8  
9 **APPLICANT/RESPONDENT**

10  
11 **C. C.**

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13 **RESPONDENT/PETITIONER**  
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16 **Appearances:**

17 **Ms. Sheridan Brooks Q.C. of Brooks & Brooks**  
18 **on behalf of the Applicant/Respondent**

19 **Mr. Kerri Cox of HSM on behalf of the**  
20 **Respondent/Petitioner**  
21

22 **Before:**

**The Hon. Mr. Justice Charles Quin Q.C.**

23 **Heard:**

**Tuesday 7<sup>th</sup> March 2017**

24 **Judgment delivered:**

**Friday 10<sup>th</sup> March 2017**  
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26 **HEADNOTE**

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28 *Matrimonial Causes Law – Matrimonial Causes Rules – Strike out application*  
29 *for Petition - Incomplete and improper pleadings.*  
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JUDGMENT

1. This is the hearing of a Summons issued by the Respondent (the “wife”) on the 1<sup>st</sup> December 2016 for the following relief:

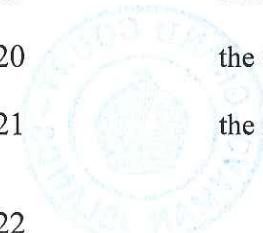
- a. That the Petition of the husband dated the 13<sup>th</sup> October 2016 be struck out.
- b. That further and/or in the alternative, the Order providing the content of the Petition be set aside
- c. That the wife be granted an extension of time in which to file her Answer and Cross-Petition in the terms attached.
- d. That the husband do pay the costs of this application to the Legal Aid Fund.

2. On the 10<sup>th</sup> November 2016 I granted an order that the facts and matters stated in the Petition were proved and I adjourned the ancillary matters to chambers.

3. The main grounds on which the wife submits the husband’s Petition should be struck out and the Order providing the content of the Petition be set aside are as follows.

4. That in paragraph 4 of the said Petition the husband pleads “*(T)hat there have been no previous proceedings brought by the parties hereto in any Court .....*”

5. The wife submits that this statement was wrong and untrue as the husband and his then attorney were aware that on 22<sup>nd</sup> August 2016 legal proceedings were commenced in the Summary Court of the Cayman Islands by the wife for maintenance of herself and the minor child of the marriage.



1 Furthermore, the wife's leading counsel submits that that the Summary Court had  
2 made at least one order of which both the husband and his then attorney were aware.  
3 Accordingly, leading counsel on behalf of the wife submits that this pleading in the  
4 husband's Petition was inaccurate and misleading.

5 6. In addition the wife's leading counsel submits that paragraph 9 of the Petition is an  
6 erroneous and invalid pleading as paragraph 9 alleges:

7 *"That the marriage between the parties has broken down irretrievably without any*  
8 *chance of reconciliation due to the fact that the [wife] has behaved in such an*  
9 *unreasonable manner towards the Petitioner/husband who finds it intolerable to*  
10 *live any longer with her."*

11 Ms. Brooks Q.C. submits that no such ground for divorce exist under the provisions of  
12 the *Matrimonial Causes Law* (the "Law") to properly plead the husband's Petition.

13 7. In effect, the wife complains that the husband has conflated two separate grounds in his  
14 Petition for the dissolution of the marriage:

15 a. Section 10(1)(a) of the Law provides:

16 *"(a)The respondent has committed adultery and the petitioner finds it*  
17 *intolerable to live with the respondent"* and

18 b. Section 10(1)(b) of the Law provides:

19 *"(b) The respondent has behaved in such a way that the petitioner cannot*  
20 *reasonably be expected to live with the respondent."*



1 8. Therefore Ms. Brooks submits that the husband has not properly pleaded either of  
2 these grounds but, instead, has pleaded a combination of both, which renders the  
3 husband's Petition invalid.

4 9. The wife's leading counsel also objects to the fact that the husband has named a third  
5 party in the particulars of unreasonable behaviour and submits that, as this person has  
6 been named, he should be served as a co-respondent and given an opportunity to  
7 defend himself.

8 10. Finally, the wife has exhibited a draft Answer denying the husband's allegations of her  
9 unreasonable behaviour and pleads that the husband is guilty of unreasonable  
10 behaviour and her Answer has set out her allegations of the husband's unreasonable  
11 behaviour.

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**HUSBAND'S POSITION**

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11. The husband's counsel, Mr. Cox, argues that although the Petition is far from being a model pleading, the basic ground of "unreasonable behaviour" on the part of the wife has been pleaded with full particulars of unreasonable behaviour set at paragraphs 5 (a) to (r).

12. The husband's verifying affidavit deposes to the fact that the wife has behaved unreasonably during the marriage. The husband repeats the particulars of unreasonable behaviour in the verifying affidavit and then reverts to the correct wording as in s.10(1)(b) of the *Law* in the Petition "*that he cannot reasonably be expected to continue living with the wife.*"

13. Mr. Cox submits that there is an irretrievable breakdown of the marriage with no hope of any reconciliation. Mr. Cox highlights the fact that both the husband and the wife agree that there has been an irretrievable breakdown of the marriage and submits with some force that it would be in the interest of both parties to agree a more neutral and less acrimonious way forward in these proceedings.

14. Mr. Cox accepts that there were proceedings before the Summary Court between the parties for maintenance for the wife and the minor child. It is the husband's position that, in any event, these Summary Court proceedings will, in effect, be subsumed by the Grand Court as part of the ancillary matters to be adjudicated upon at a later date.

15. Furthermore, Mr. Cox submits that there was no intention to mislead the Court by the husband or his previous attorney.





1 **CONCLUSION**

2 20. I acknowledge that the Petition does not plead one of the grounds set out in s.10(1)(a)  
3 –(e) of the **Law**. In some respects it is a highly technical objection, in that the Petition  
4 failed to plead that the husband “*cannot reasonably be expected to live with the wife.*”

5 21. In **MD v ED**<sup>1</sup> Mangatal J addressed flawed pleadings in Family cases. At paragraph 11  
6 of her judgment the learned Judge says

7 *“In my judgment the Petitioner has failed to plead proper grounds in that she has*  
8 *yet to allege in her Petition that she cannot reasonably be expected to live with the*  
9 *respondent as a result of the behaviour described by her in the Petition as being*  
10 *unreasonable.”*

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12 The learned Judge goes on to add:

13 *“Describing the behaviour as unreasonable is insufficient.”*

14 22. Similarly Mangatal J continues at paragraph 13 in **MD v ED** – in relation to the  
15 ground of adultery – the Petitioner failed to plead the words of s.10(1)(a) of the Law  
16 and the learned Judge stated:

17 *“As regards adultery, I agree that this has not been properly pleaded nor has the*  
18 *Petitioner pleaded “and the Petitioner finds it intolerable to live with the*  
19 *Respondent.”*

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21 23. At paragraph 14 of her judgment Mangatal J refers to the judgment of Williams J in  
22 **CMS v RGS**<sup>2</sup> and states:

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<sup>1</sup> Unreported – FAM 6/15 – distributed to counsel on the 15<sup>th</sup> March 2016  
<sup>2</sup> FAM 177 of 2013



1                    *“In CMS v RGS at paragraphs 60-65, Williams J discusses the grounds for divorce*  
2 *and, in relation to ground 10(1)(b), the importance of that aspect of the ground*  
3 *consisting of “that the petitioner cannot reasonably be expected to live with the*  
4 *Respondent.”*

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6            24.    At paragraph 17 Mangatal J sets out the important principle with which I agree and  
7            adopt:

8                    *“Although rules as to pleadings have become more relaxed it nevertheless remains*  
9 *the case that they are necessary to delineate the case to be tried.”*

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11            The learned Judge then struck out the Petition and made no order as to costs.

12            25.    It is for exactly the same reason that I herein strike out the Petition of the husband  
13            dated the 13<sup>th</sup> October 2016 and set aside my Order of the 10<sup>th</sup> November 2016.

14            26.    Although the wife seeks an order for costs against the husband I am going to following  
15            Mangatal J’s order in *MD v ED* and make no order as to costs.

16            27.    In the wife’s acknowledgment of service dated the 31<sup>st</sup> October 2016 and signed by the  
17            wife and her attorneys, Brooks & Brooks, she indicated that she intended to defend the  
18            Petition.

19            28.    The wife failed to file an Answer (or any Cross Petition) within fourteen (14) days  
20            pursuant to r.12(1) of the *Matrimonial Causes Rules* (the “Rules”).

21            29.    The fact that the wife was applying for legal aid does not relieve her of the obligation  
22            to comply with the Rules and, moreover, if she had filed her Answer (and Cross-  
23            Petition) within the time laid down in the Rules, then there would have been no  
24            necessity to issue the Summons before me today.




1 30. In addition, I accept my own mistake in not picking up the husband's failure to plead  
2 "and cannot reasonably be expected to live with the wife" when I acceded to the  
3 application for an order that the Petition be proved on the 10<sup>th</sup> November 2016.

4 31. Accordingly, I make the same order as Mangatal J did in *MD v ED* and strike out the  
5 Petition with no order as to costs.

6 32. I do express my sincere hope that the parties, with the assistance of their very  
7 experienced Family counsel, will try to agree the wording of a Petition which will  
8 remove the unnecessary acrimonious allegations and counter allegations of  
9 unreasonable behaviour, and follow Williams J's helpful and sensible advice.

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11 **Dated this the 10<sup>th</sup> day of March 2017**

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13 **Honourable Mr. Justice Charles Quin Q.C.**  
14 **Judge of the Grand Court**